

§ 307.19

Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

(iii) Prior to EDA's disbursement of additional funds to the surviving RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter;

(iv) EDA must provide written approval of the merger agreement(s), modifications and revisions to the Plans and any other related amendments thereto;

(v) All applicable RLF Grant assets of the discharging RLF Recipient(s) transfer to the surviving RLF Recipient as of the merger's effective date; and

(vi) The surviving RLF Recipient becomes fully responsible for administration of the RLF Grant assets transferred and fulfills all surviving RLF Grant requirements and any other conditions reasonably requested by EDA.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008]

§ 307.19 RLF loan portfolio Sales and Securitizations.

EDA may take such actions as appropriate to enable an RLF Recipient to sell or securitize RLF loans, except that EDA may not issue a Federal guaranty covering any issued Security. With prior approval from EDA, an RLF Recipient may enter into a Sale or a Securitization of all or a portion of its RLF loan portfolio, provided:

(a) An RLF Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans;

(b) An RLF Recipient must request EDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized;

(c) No Security collateralized by RLF loans and other RLF property and offered in a secondary market transaction pursuant to a Securitization shall be treated as an Exempt Security for purposes of the Securities Act of 1933, as amended (15 U.S.C. 77a *et seq.*), or the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a *et seq.*) (the "Exchange Act"), unless exempted by a

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rule or regulation issued by the Commission; and

(d) Except as provided in paragraph (c), no provision of this section supersedes or otherwise affects the application of the "securities laws" (as such term is defined in section 3(a)(47) of the Exchange Act) or the rules, regulations or orders issued by the Commission or a self-regulatory organization under the Commission.

§ 307.20 Partial liquidation; liquidation upon termination.

(a) *Partial liquidation or disallowance of a portion of an RLF Grant.* If the RLF Recipient engages in certain problematic practices, EDA may disallow a corresponding proportion of the Grant or direct the RLF Recipient to transfer loans to an RLF Third Party for liquidation. Problematic practices for which EDA may disallow a portion of an RLF Grant and recover the pro-rata Federal Share (as defined in § 314.5 of this chapter) include but are not limited to the RLF Recipient:

(1) Having RLF loans that are more than one hundred and twenty (120) days delinquent;

(2) Having excess cash sequestered for twelve (12) months or longer and EDA has not approved an extension request;

(3) Making an ineligible loan;

(4) Failing to disburse the EDA funds in accordance with the time schedule prescribed in the RLF Grant; or

(5) Determining that it does not wish to further invest in the RLF or cannot maintain operations at the degree originally contemplated upon receipt of the RLF Grant and requests that a portion of the RLF Grant be disallowed, and EDA agrees to allow the disallowance.

(b) *Liquidation upon termination.* When EDA approves the termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation.

(c) *Terms.* The following terms will govern any liquidation:

(1) EDA shall have sole discretion in choosing the RLF Third Party;

(2) The RLF Third Party may be an Eligible Applicant or a for-profit organization not otherwise eligible for Investment Assistance;